

Appl. No. 10/699,469
Atty. Docket No.9081M
Amdt. Dated July 21, 2006
Reply to Office Action of February 2, 2006
Customer No. 27752

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REMARKS

Claims 1-2, 4-20, 23-39 and 41-54 are pending in the present application.

Claims 3 and 22 have been cancelled without prejudice.

Claims 1 and 2 have been amended to recite that the striped personal cleansing composition phase further comprises a density modifier comprising a low density microsphere. Support for the amendment is found in original Claims 3 and 22. As well, density modifiers are discussed at length in the specification from page 8, line 26 to page 9 line 27 and from page 20, line 30 to page 21, line 6. Claim 1 has been amended to specify "hydrophobic skin benefit agent" and "Vaughan Solubility Parameter" for consistency. Support for this amendment can be found in the specification on page 13, line 4 to page 17, line 2 and original claim 2. Claim 2 were amended to delete the phrase while remaining stable at ambient for 180 days.

Claims 4, 5, 11, 23, 24 and 30 have been amended to correct antecedent basis. Support for the amendments to Claims 4 and 5 are found in original claim 3. Support for amendments to Claims 11 and 30 can be found in original claim 11 and 30 and in the specification from page 16, line 23 to page 17, line 2.

Claims 41- 54 have been added. Support for Claim 41-46 can be found in the specification from page 8, line 26 to page 9 line 27 and from page 20, line 30 to page 21, line 6. Support for Claim 47 can be found page 6, lines 20-32. Support found 48 can be found on page 8, lines 3-19. Support for Claim 49 and 50 can be found on page 15, lines 19-20. Support for Claims 51 and 52 can be found in the specification from page 23, line 26 to page 27, line 12. Support for Claim 53 can be found in the specification on page 6, line 33-34. Support for Claim 54 can found in the specification from page 23, line 26 to page 27, line 12.

These amendments have been made only in an effort to expedite the prosecution and gain allowance of the present application. As such, the Applicants are concurrently filing continuation applications to pursue claims of varying scope.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

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**Rejection Under 35 USC §103(a) Over Mitra (U.S. Patent No. 6,534,457) or
Hayward, et al. (U.S. Patent No. 6,534,456.)**

Claims 1-13, 16-20, 22-32 and 35-39 are rejected under 35 USC §103(a) over Mitra or Hayward, et al (hereinafter referred to as "Hayward"). This rejection refers to Claims 3 and 22, however, the Office Action fails to specifically address the basis for rejection of Claims 3 and 22, which recite that the compositions further comprise density modifiers that comprises low density microspheres.

The Office Action states that Mitra or Hayward generally discloses the composition and container of the present invention. The Office Action states that Mitra or Hayward discloses a plurality of liquid cleansing compositions in lamellar phase, which are contained in a partionless container. The Office Action states that the multiphase composition of Mitra or Hayward is stable upon storage and is dispensed as a striped product where typically one stripe has a cleansing function and a second stripe has a moisturizing function. The Office Action admits that Mitra or Hayward does not specifically teach with sufficient specificity the Applicant's stripe size, width, and yield point. However, the Office Action argues that it would have been obvious to one skilled in the art to produce a stripe of Applicants size because Mitra or Hayward each teach specific surfactants, emollients in their requisite proportions. The Office Action therefore concludes that absent a showing to the contrary one skilled in the art would have expected the stripes to form in the measurements and the composition to encompass a yield point. Thus, the Office Action states that a *prima facie* case of obviousness was established because the art provided the motivation to make the claimed compositions in the expectation that they would have similar properties.

The Applicants respectfully traverse the rejection.

Mitra or Hayward does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of amended Claims 1 and 2, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03. Specifically, Mitra or Hayward does not teach or suggest a striped personal cleansing composition that comprises a density modifier comprising a low density microsphere as described in amended Claims 1 and 2. Therefore, because in combination and separately Mitra and Hayward does not teach or suggest a density modifier comprising a low density microsphere of Claims 1 and 2, thus, the claimed invention is unobvious and the rejection should be withdrawn.

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Rejection Under 35 USC §103(a) Over Mitra (U.S. Patent No. 6,534,457) or Hayward (U.S. Patent No. 6,534,456.) in view of Williams, et al. (U.S. Patent No. 6,429,177)

Claims 14-15 and 33-34 are rejected over Mitra or Hayward in view of Williams (hereinafter referred to as Williams).

The Office Action states that the rejection, concerning Mitra or Hayward is relied upon as set forth above. The Office Action admits, however, that Mitra or Hayward does not teach an electrolyte component. The Office Action states that Williams discloses a separating multiphase wash composition in a transparent container, wherein the composition comprises surfactants, thickeners, polyols and electrolytes. The Office Action states that it would have been obvious to one of skill in the art to include the electrolyte of Williams to the compositions of Mitra or Hayward because Mitra or Hayward teaches multiphase compositions and portioning of layers. The Office Action concludes that absent a showing to the contrary, one of ordinary skill would have been motivated to include the electrolyte to further induce stripe separation as suggested by Williams.

The Applicants respectfully traverse the rejection.

Mitra or Hayward in view of Williams do not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of Claims 1 and 2, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). Specifically, Mitra, Hayward and Williams, separately or in combination, do not teach or suggest a striped personal cleansing composition that comprises a density modifier comprising a low density microsphere as described in amended Claim 1. Therefore, because in combination and separately Mitra, Hayward and Williams does not teach or suggest a striped personal cleansing composition that comprises a density modifier comprising a low density microsphere as described in amended Claims 1 and 2, thus the claimed invention is unobvious and the rejection should be withdrawn.

Double Patenting

Claims 1-20 and 22-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of the following co-pending Application Nos. 10/665,570; 10/050,494; 10/841,174;

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10/963,166; 10/961,719; 11/263,749; 11/198,618; 11/198,538; 11/197,982; 11/001,796;
11/178,047; and 11/198,866.

To facilitate the allowance of the Claims, Applicants have enclosed the appropriate Terminal Disclaimer over the referenced Application Nos. 10/841,174; 10/963,166; 10/961,719; 11/198,618; 11/198,538; 11/197,982; and 11/178,047.

As to the co-pending Application Nos. 10/665,570; 10/050,494, 10/961,719, 11/001,796, and 11/198,866, the Applicants respectfully traverse the rejection.

The Office Action states that although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in subject matter pertaining to multiphase or striped personal care compositions comprising surfactants emollients, particles, microspheres and electrolytes.

According to Section 804 of the MPEP: Any obvious-type double patenting rejection should make clear:

- (A) The difference between the inventions defined by the conflicting claims-a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue an obvious variation of the invention defined in the claim.

In addition, the Federal Circuit has held that the Examiner's showing of obviousness must follow the analysis used to establish a prima facie case of obviousness. In re Longi, 759 F.2d 887, 225 USPQ 645, 651 (Fed. Cir 1985)

Applicants respectfully submit that the obviousness type-double patenting rejection is improper because the Examiner made a showing of obviousness or established a prima facie case of obviousness. To establish a prima facie case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art (See In Re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03). In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by co-pending Applications 10/665,570; 10/050,494, 10/961,719, 11/001,796, and 11/198,866. Thus, the Examiner's rejection is improper.

Moreover, a prima facie case of obviousness has not been met because the prior art references co-pending Applications 10/665,570; 10/050,494, 10/961,719, 11/001,796,

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and 11/198,866 do not teach or suggest all of the claim limitations in Claim 1 and 21. Specifically, these patents and applications do not teach or suggest a striped personal cleansing composition that comprises a density modifier comprising a low density microsphere as in Claims 1 and 2. Therefore, the double-patenting rejection of Claims 1-20 and 22-38 should be withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §103(a) and double patenting. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-2, 4-20, 23-39, and 41-54 is respectfully requested.

Respectfully submitted,

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